

JUL 30 2003

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FEDERAL ELECTION
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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

CASE CLOSURE UNDER

ENFORCEMENT PRIORITY SYSTEM

2003 JUL 30 P 2:00

SENSITIVE

GENERAL COUNSEL'S REPORT¹

RECOMMENDATION:

OGC recommends that the Commission exercise its prosecutorial discretion and close MUR 5315 effective two weeks from the date the Commission votes on the recommendation. Closing the case as of this date will allow CED and the Legal Review Team the necessary time to prepare closing letters and case file for the public record.

Take no action, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters in MUR 5315.

¹ This General Counsel's Report, containing an EPS recommended closure, is being circulated separately from a second report, containing other EPS recommended closures, due to the General Counsel's recusal in MUR 5315.

23-04-406-1846

James A. Kahl
Deputy General Counsel

7/29/03
Date

BY: Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel for Enforcement

Jeff S. Jordan
Jeff S. Jordan
Supervisory Attorney, CED

Attachment:
Narrative in MUR 5315

23-04-406-1847

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6 **MUR 5315**
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8 **Complainants:** Patricia Hawkins
9 Larry Owen
10 Betty Owen
11 Linda Gunter
12

13 **Respondents:** Wal-Mart Stores, Incorporated
14 Sam's Club Corporation
15 Dole 2002 Committee
16 Brent D. Barringer, Treasurer
17

18 **Allegations:** The Complainants alleged that the Wal-Mart Inc., ("Wal-Mart") and Sam's
19 Club Corporation ("Sam's Club") mailed over 200,000 magazines, entitled *Source*,
20 featuring an article about Elizabeth Dole and pictures that appear to be identical to
21 pictures she used for her senatorial campaign. *Source* is produced by Wal-Mart. The
22 mailing occurred two weeks prior to the North Carolina primary election where Mrs. Dole
23 was a candidate.
24

25 **Responses:** Wal-Mart and Sam's Club responded by stating that the article featured in
26 *Source* neither involved nor mentioned Elizabeth Dole's campaign and that the executive
27 who approved the article was unaware of her candidacy. The article's main focus was
28 Mrs. Dole's interest in literacy, which is also an interest of Sam's Club. Since September
29 was National Literacy Month, the September issue of *Source* publicized Sam's Clubs'
30 efforts to increase literacy. The issue followed a tradition established in September 1999
31 when George and Barbara Bush were pictured on the cover of the magazine in addition to
32 an article written highlighting their interest in literacy. The selection of Elizabeth Dole
33 for the cover was made in October 2001 without any consideration of her candidacy for
34 the United States Senate and with absolutely no intention to aid her campaign. The
35 picture used, showing Mrs. Dole with a child wearing a campaign patch, was chosen only
36 because it showed her with a child. There was no intention on the part of Sam's Club, or
37 anyone else, to assist Mrs. Dole's campaign for the Senate in any way.
38

39 In response to the complaint, the Dole 2002 Committee and Brent D. Barringer, as
40 treasurer, indicated that the article appeared in a periodical publication specifically
41 exempt from the application of the Federal Election Campaign Act, as amended ("Act").
42 The article did not expressly advocate for the election or defeat of any clearly identified
43 federal candidate. Specifically, there was no reference to Elizabeth Dole's candidacy for
44 the United States Senate; therefore, no violation of the Act occurred. Consequently, the
45 respondents indicated that there was no further factual or legal grounds to pursue an
46 investigation in the matter.

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This matter is less significant relative to other matters pending before the Commission.

23-04-406-1849